COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-399

POTOROO LLC

vs.

EMADEDDIN MUNTASSER.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Potoroo LLC (Potoroo), appeals from a summary judgment in favor of Emadeddin Muntasser. Potoroo argues that the termination of the commercial lease between Potoroo (as landlord) and Geneva Furniture IV, LLC (Geneva), as tenant, did not relieve Muntasser's personal guaranty obligations under the lease. Muntasser counters that, because his guaranty obligation (hereinafter, guaranty) was predicated on the fully satisfied terms of a lease that subsequently was terminated, his obligations as guarantor no longer exist. We agree, and affirm.

Background. Muntasser is the sole owner of Geneva. On May 17, 2006, Muntasser, as "manager" of Geneva, entered into a ten-year commercial lease with Technology Center Drive, LLC, and Simeone Stoughton LLC (lease), Potoroo's predecessors-in-

interest.[1] On the same day, Muntasser executed a guaranty, accepting personal liability for, as relevant here, the payment of rent by Geneva as required under the lease. During the lease period, Geneva continuously fell behind on its rent payments and, in 2009, after several "legal skirmishes," Potoroo filed a summary process eviction action in the District Court. This action eventually was resolved through an agreement for judgment, memorialized in a February 12, 2009 settlement agreement (agreement) which, by its terms, "validly terminated" the lease; the agreement also provided for judgment in favor of Potoroo for rent arrearage in the amount of $127,914.78, owed under the terms of the lease.[2] Under the terms of the agreement, Geneva was allowed to continue to occupy the property so long as, going forward, it timely paid the monthly rent amount "which would be due under the [l]ease if said [l]ease were still in force and effect (which it is not)." Muntasser signed the agreement as manager of Geneva, but he did not in this agreement provide a personal guaranty as to the fulfillment of obligations thereunder.

Geneva then fell behind in its rent obligations as outlined in the lease. After vacating the premises in 2013, Geneva filed

[1] Potoroo acquired its interest in the property in December 2006.
[2] In accordance with the terms of the agreement, Geneva paid the rent arrearage in full.

suit for the return of its $437,100 security deposit; Potoroo counterclaimed, alleging Geneva's breach of the agreement. In May 2015, a jury found in favor of Potoroo on its counterclaim, and judgment entered in its favor in the amount of $437,100; Geneva failed to pay the judgment. As a result, in July 2015, Potoroo commenced the underlying action against Muntasser personally, seeking full satisfaction of the judgment. In its amended complaint Potoroo alleged that Muntasser was liable for payment of the outstanding judgment due to his obligations under the guaranty. In July 2017, the parties filed cross motions for summary judgment; Potoroo sought only partial summary judgment on count one (breach of guaranty) of its amended complaint.[3] Muntasser denied liability, arguing that he personally had guaranteed Geneva's obligations under the lease, not the settlement agreement; he sought dismissal of Potoroo's amended complaint.

After hearing, the judge concluded that Muntasser's guaranty of Geneva's obligations pertained to the lease only; it was undisputed that the lease itself had terminated in 2009 and that Geneva had fully paid its rent obligations thereunder. From that point onward, all of Geneva's obligations to Potoroo "were governed by the [agreement], which expressly replaced the

[3] Copies of the parties' motions for summary judgment were not included in the record appendix.

[l]ease as the operative document that controlled the parties' relationship." The judge noted that it was undisputed that the basis for the underlying action stemmed from a breach of the agreement, not the lease, thus relieving Muntasser of any personal liability for payment of the judgment. He allowed Muntasser's motion for summary judgment, and dismissed Potoroo's amended complaint.[4] Potoroo timely appealed.

Discussion. Potoroo makes essentially the same argument on appeal as it did below, contending that, despite the termination of the lease, Muntasser was not relieved of his obligations under the separately enforceable guaranty. For support, Potoroo relies on Cedar-Fieldstone Marketplace, LP v. T.S. Fitness, Inc., 93 Mass. App. Ct. 33 (2018) (Cedar-Fieldstone),[5] claiming that the undisputed facts demonstrate that Muntasser's liability is not affected by the status of the lease and, thus, summary judgment in Muntasser's favor was improper. We disagree.

"In considering a motion for summary judgment, we review the evidence and draw all reasonable inferences in the light most favorable to the nonmoving party." Flint v. Boston, 94 Mass. App. Ct. 298, 303 (2018). The moving party has "the

[4] The judge also determined that, because Potoroo did not include in its amended complaint a claim to recover future, unpaid rent by Muntasser under the terms of the lease, entry of summary judgment in Muntasser's favor was not precluded.

[5] Cedar-Fieldstone was issued shortly after the judge issued his decision in the present case.

burden of establishing that there is no genuine issue as to any material fact and that [it is] entitled to judgment as a matter of law" (citation omitted). Id. We review the decision to grant summary judgment de novo. Id.

"A guaranty is a contract 'like all other contracts.'" Federal Fin. Co. v. Savage, 431 Mass. 814, 817 (2000), quoting Merchants Nat'l Bank v. Stone, 296 Mass. 243, 250 (1936). "Accordingly, '[t]he liability of a guarantor is to be ascertained from the terms of the written instrument by which the obligation is expressed, construed according to the usual rules of interpretation.'" Cedar-Fieldstone, 93 Mass. App. Ct. at 37, quoting Agricultural Nat'l Bank of Pittsfield v. Brennan, 295 Mass. 325, 327 (1936).

In the present case, the express terms of the guaranty stated that, as a condition to the execution of the lease, Muntasser was required to guaranty "certain liabilities, obligations and duties of [Geneva] under the [l]ease"; those obligations included the monthly payment of rent. In addition, the guaranty provided for a durational period in which it would be effective: the terms explicitly stated that the "guaranty shall remain in full force and effect during the original term and any extensions of the [o]riginal [t]erm of the [l]ease." This language in the guaranty was clear and unambiguous, and there was no language in the guaranty requiring Muntasser to

provide written notice of termination. See Federal Fin. Co., 431 Mass. at 817 ("When the words of the guaranty 'are clear they alone determine the meaning'").

According to the terms of the agreement, Geneva agreed to pay the then outstanding rent arrearage accumulated under the lease and totaling $127,914 (which it did); under the terms of the agreement, the lease was then terminated. Potoroo does not dispute this. As a result of this full satisfaction of Geneva's rent obligations under the lease, and the subsequent termination of "the original term and any extensions of" the lease, Muntasser's obligations under the guaranty were no longer in "full force and effect"; in other words, because the lease (the guaranteed contract) had extinguished, so did Muntasser's liability under the contract he signed guaranteeing the lease obligations. This is consistent "with the well-established rule that the 'liability of the guarantor . . . can be terminated only in accordance with the terms of the [guaranty].'" Id., quoting Merchants Nat'l Bank, 296 Mass. at 252. See Cedar-Fieldstone, 93 Mass. App. Ct. at 37 ("it [is] self-evident that parties negotiating the terms of a guaranty would be free to agree that a subsequent release of a principal obligor's underlying debt would result in a discharge of the guarantor's own obligations"). The agreement thereafter became the operative document outlining Geneva's rent obligations to

Potoroo for its continued occupation of Potoroo's property -- an agreement that Muntasser did not personally guarantee.

Potoroo's reliance on Cedar-Fieldstone, in arguing that the termination of the lease did not relieve Muntasser from his guaranty obligations, is misplaced, as the facts here are distinguishable for at least three reasons. First, in the present case Potoroo pursued Muntasser for an unpaid judgment entered in its favor on Potoroo's counterclaim against Geneva for a breach of Geneva's obligations under the agreement, an agreement under which Muntasser had no personal liability. In contrast, in Cedar-Fieldstone, the plaintiff landlord sought (through a collection action) to enforce an agreement for judgment entered against the defendant tenant in a summary process action, based on the nonpayment of rent in accordance with the terms of a then-existing modified lease that personally was guaranteed by the tenant's president. See 93 Mass. App. Ct. at 34-35. There, the personally guaranteed lease was the governing instrument; here, the nonguaranteed agreement is the governing instrument.

Second, here, unlike in Cedar-Fieldstone, Geneva paid in full its rent obligation under the terminated lease under which Muntasser personally had guaranteed payment. Third, here, in contrast to Cedar-Fieldstone, there was no language in the

guaranty requiring Muntasser to provide written notice of termination of his guaranty. See id. at 34.

Based on the foregoing, we see no error in the judge's determination that there was no genuine issue as to any material fact, and that Muntasser was entitled to judgment as a matter of law. See Flint, 94 Mass. App. Ct. at 303.

Judgment affirmed.

By the Court (Vuono, Hanlon & Shin, JJ.[6]),

Joseph F. Stanton

Clerk

Entered: August 16, 2019.

[6] The panelists are listed in order of seniority.